App. F. IX-4

Previous References

1930-31
Amrzrai

File No. 337-30
Serial Nos. 3

Later References

Mysore 1927-35-1

General and Revenue Secretariat.

Serial Nos. /

Part B for September 31

SUBJECT.

Copy of Judgment in Regular Appeal No 72 of 26-27 on the file of the High court of Mysore. (Rangachar Vs. Chief Secy to GC Mysore & Amildar T Narasipura)

To Mysore Secretariat

No 338 & 29.8.31

Forwards to Mysore Copy of Judgment for info

W/
29.9.31

Appendix F G–1]

SUBJECT—

Section Misc 2

File No 337-30

Serial No. 3

Diary No. of letter replied to

No. 338/one

To The Mc

General and Revenue Secretariat

( )

the *193*

Date of issue 29.8.31

Typ. Seeta

Signed by Mr. V.S.

Please copy enclosure.

Sir,

In continuation of this office letter No 18 of 4.7.31, I am directed to forward herewith* the Judgement in R.A. No 72 of 26-27 on the file of the High Court of Mysore (Ranganathan Vs Chinnaiah) for your information. Please etc

24.3.31

for Secy to Govt.

Misc

29/8/31

G.S 24/8

List of enclosures

Copied by

Examined by

28/8/31

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IN THE HIGH COURT OF MYSORE AT BANGALORE.

Tuesday, the 9th day of June 1931.

Present.

Mr. Justice D.V. Rama Rao and Mr. Justice G. Sreenivasa Iyer.

Regular Appeal No.72 of 1926-27.

Rangachar	Plaintiff	Appellant
Vs.		
1. The Chief Secretary to the Government of Mysore, Bangalore.	Defendants	Respondents.
2. The Muzrai Commissioner in Mysore, Bangalore.		
3. The Deputy Commissioner and Muzrai Officer, Mysore		
4. The Amildar, T-Narasipur Tq.		

Regular Appeal against the decree of the District Judge of Mysore in Original Suit No. 7 of 1923-24.

This regular appeal coming on for hearing on Tuesday the 6th day of January 1931, the Court delivered the following

Judgment

The main question in this appeal is whether the suit lands were gifted by the Plaintiff's grand-father to the temple of Sri Venugopalaswamy, or whether they belong to the ~~xx~~ plaintiff (Appellant) who claims them as his own property. The learned District Judge has not lost sight of the points in Plaintiff's favour; he has relied on the strogger evidence and probabilities in support of the defendants' case. With regard to the plea of gift the position taken by the Plaintiff cannot be said to be quite clear from the pleadings and his evidence. At the commencement of the arguments the learned counsel for the plaintiff stated that the plaintiff's grand-father did endow certain lands to the temple, but that they were in villages other than Ukkalagere where the suit lands are

situated. This also seems to be the attitude finally taken by the plaintiff in his deposition before the lower court. That attitude however is inconsistent with his admission in Exhibit I made in the year 1906 wherein he stated that the gifted Lands in Ukkalagere comprised Naji Nos. 62, 63 and 64. The explanation subsequently offered is, that till 1906 it was the plaintiff's brother Sreenivasa Raghavachar that was the owner of the village, that thereafter the village was sold in execution of the decree against plaintiff's brother, that the plaintiff purchased the village from the auction purchaser, that he himself was not conversant with the details of lands, and that when he gave the statement Exhibit I he relied upon the note Exhibit VI said to be in the writing of temple Shanbhogue Krishnappa. If this is so there was no reason for the plaintiff to have made such a statement once again in the year 1910 as per Exhibits IV and V, seeing that during the period of four years he had ample opportunity to verify as he was the Manager of the temple. Despite his knowledge that the temple accounts did not give the exact particulars of the land, he definitely stated in Exhibit V that Nos. 62 to 64 had been gifted to the temple. It is also to be observed that the plaintiff is a resident of Ukkalagere. Shanbhogue Krishnappa has been examined as the third witness for the defendants. He denied that any patti was written showing the lands belonging to the temple. The document Exhibit VI was produced only by the plaintiff during the enquiry by the Amildar. Krishnappa was not questioned in the lower court regarding it and hi his explanation was not elicited as to when and why it became necessary to prepare the patti. There is also the statement of the plaintiff's cousin Sundra Sudarasanachar recorded in 1904 as per Exhibit XVI which clearly mentions the gift of land in Ukkalagere to the temple. Sundara Sudarsanachar has not been examined, but that is because he is very old and his mind is not in proper condition to stand cross-examination. His statement is considerably strengthened by the old lists showing the income of the temple as well as by the taluk reports summarised in the entries of To and From Registers.

We may take it therefore that some lands in Ukkalagere were gifted by the plaintiff's grand-father to the temple. The argument that the Patta still remained in the family is of no avail, since the pattas of even the other lands were not transferred from the name of the Jodidar. So also the omission to file a claim petition during the execution proceedings against plaintiff's brother cannot be said to be material, seeing that no claim was put forward either for the suit lands or for any other lands in Ukkalagere. Nor can anything be based upon non-payment of cesses and other sundry taxes in the absence of proof that they were not levied from the Jodidar or ryots; the probability is that only the net realisation was credited by the manager to the temple accounts.

The question then is whether the lands in Ukkalagere that were in fact gifted to the temple, are the suit lands or any other lands. If the plaintiff, according to one portion of his evidence, claims also maji Nos. 62 to 64, what other lands could have been gifted has not been indicated by him. The temple was throughout in the management of one or other of the plaintiff's family members. During his management the plaintiff maintained no accounts. He has not examined the tenants to show the lands the produce of which was being given to the temple. If, as he tries to make out, he was ignorant of the details, it will not do for him to merely assert that the evidence adduced by the defendants must be taken to be false. The temple accounts clearly prove that the extent of the gifted lands was three candies. Maji Nos. 62 to 64 comprise only two candies; Moreover there is evidence to the effect that they were dry and not wet lands at the time of gift. The gifted lands go by the name of Thubina thotti gadde. That is corroborated by a number of old documents as well as by the evidence of Shanbhogue Krishnappa who is an aged man of 74 years, not to mention the plaintiff's own admission in his reply statement. The witness is unable to give particulars of the boundaries and that by itself is no reason to disbelieve his testimony regarding the identity of the lands. The suit lands are close to the sluice, while the lands 62 to 64 are far away from it.

It is urged that at any rate S.No. 328 has been wrongly included

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by the defendants, and reference was invited to Exhibit XX. But Exhibit XX is only a report and cannot be said to be conclusive in the matter of Survey Numbers; it specifically mentions maji No.101 and does not seem to consider all the Survey numbers that go to make it up. On the other hand the inam account Exhibit XIX and Vasul baki accounts XIIb and XIIc, together with the evidence of Thammiah (Defendants' witness ~~xxx~~ No. 1) and the Parpathegar (Defendants' witness No. 6) go to prove that maji ~~xxx~~ No. 101 was ~~gift~~ gifted and that survey No. 328 is included in it. Hence the contention cannot prevail.

As to the alleged adverse possession we fail to see how upon the pleadings ~~xx~~ an issue regarding it arose at all for trial. In any event we feel no hesitation in agreeing with the lower court in its finding on the point. The plaintiff got possession of all the temple properties, which as we hold, must have ~~x~~ included the suit lands. Though the plaintiff says that he ceased to work as manager since ~~xx~~ 1910, there is nothing to show that he handed over charge of the properties entrusted to his management till he was actually removed by order of Government. If then he could not set up adverse possession in respect of such temple properties entrusted to his care, he cannot be allowed to make an exception with regard to the suit lands.

In the result the appeal fails and is dismissed with costs.

Sd/- D.K. Rama Rao,
Judge.

Copy "
Sd. A.R. Nageswara Iyer.
Govt Advocate.

Sd/- G. Sreenivasa Iyer, Judge.

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* C O P Y *

M.S. Krishnamachari
Secretary to Government,
Financial Department.
C.S

C.R.G.2.